

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. M MC 74127 through M MC 74129.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Recordation

Failure to file instruments required by 43 U.S.C. § 1744 (1982) and 43 CFR 3822.2 in the proper BLM office within the time period prescribed constitutes abandonment of the mining claim.

APPEARANCES: Lawrence H. Sverdrup, Esq., Libby, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Appeal has been taken by Karen M. Anderson from an October 24, 1983, decision of the Montana State Office, Bureau of Land Management (BLM), which declared the unpatented Red Shirt #1, Diamond H, and Diamond B lode mining claims, M MC 74127 through M MC 74129, abandoned and void because no proof of labor or notice of intention to hold the claims for calendar year 1982 was filed with BLM prior to December 31, 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2.

The subject mining claims were located by Karen M. Anderson and Ole Oie on March 18, 1981, and were recorded with BLM on May 4, 1981. These claims are relocations of mining claims, M MC 52058 through M MC 52060, declared abandoned and void by BLM. An appeal of the decision invalidating these claims was made to the Board, docketed as IBLA 81-674, and dismissed for failure to timely file a statement of reasons. See order dated July 10, 1981. The later relocations, however, were identified by claimants in the notices of location and the 1981 affidavit of annual assessment by the serial numbers assigned to the voided claims. BLM accepted the documents, but notified claimants by letter dated May 11, 1981, that future references to the claims, including annual filings, should use the currently assigned serial numbers.

It is argued in the statement of reasons that the subject claims are voided for an insignificant mistake, i.e., the serial numbers of the

previously voided claims were inadvertently used on the submitted proof of labor. It is also asserted that the decision is a "taking of a valuable property right without due process." The basis for BLM's decision, however, has been incorrectly characterized in the statement.

[1] BLM determined the claims were abandoned because the necessary documents were not timely received. Section 314 of FLPMA requires the owner of an unpatented mining claim to file with BLM, on or before December 30 of each year, an affidavit of assessment work performed or a notice of intent to hold the claim. See also 43 CFR 3833.2-1. Failure to file results in a conclusive presumption of abandonment by the owner. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4. Responsibility for compliance with this recordation requirement rests with the owner of the unpatented mining claim. Those claims for which timely filings are not made are automatically extinguished by operation of law; intent is irrelevant if the necessary filings are not made. United States v. Locke, 105 S. Ct. 1785, 1796 (1985). ^{1/} Moreover, a hearing to determine intent is unnecessary. *Id.* at 1798-99. The Department has no authority to waive or excuse noncompliance with the statute. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

It is implied in the statement of reasons that a copy of the 1982 proof of labor was sent to BLM. Where BLM's records indicate a filing has not been made, however, a statement, without corroborating evidence, claiming that a missing document was sent to BLM is insufficient to overcome the presumption that BLM did not receive the document. See James Boatman, 87 IBLA 31 (1985); John R. Wellborn, 87 IBLA 20 (1985). A copy of claimants' affidavit for 1982, attached to the appeal, shows it was filed with the County Recorded, Lincoln County, Montana, on December 3, 1982, but does not indicate it was received by BLM before December 31, 1982. The affidavit identifies the claims by name and serial numbers M MC 52058 through M MC 52060. A memorandum to the BLM case file indicates that after this appeal was received BLM also examined the case file for claims M MC 52058 through M MC 52060 for the possibility a copy of the 1982 affidavit was placed in the earlier invalidated claims file, but did not find the document. Thus, there is nothing of record to establish that a copy of the 1982 affidavit was timely filed with BLM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski Will A. Irwin
Administrative Judge

Administrative Judge

^{1/} Action on this appeal was stayed pending the decision in *Locke*, which was handed down Apr. 1, 1985.

